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11 ADIL HIRAMANEK, et al.,
12 Plaintiffs,
13 v.
14 L. MICHAEL CLARK, et al.,
15 Defendants.

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

10 Case No. 5:13-cv-00228-RMW
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**ORDER DENYING MOTION FOR
RECONSIDERATION OF SEPTEMBER
1, 2016 SUMMARY JUDGMENT
ORDER**

16 Re: Dkt. Nos. 735, 736
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Plaintiff Adil Hiramanek requests leave to file a motion for reconsideration of this court's September 1, 2016 order, Dkt. No. 711, which granted partial summary judgment in favor of defendants Daryl McChristian, Bryan Plett, and Timothy Polumbus. Dkt. Nos. 735, 736. For the reasons set forth below, plaintiff's motion is DENIED.

20 **I. PROCEDURAL DEFICIENCIES**

21 Plaintiff has a long history of filing motions for reconsideration that are meritless or that
22 fail to comply with the local rules of this district and the orders of this court. *See* Dkt. No. 571 at
23 3-4. In response to plaintiff's conduct, this court ordered that "[i]f any party wishes to request
24 leave to file a motion for reconsideration, the party must file a motion for leave pursuant to Civil
25 Local Rule 7-9, not exceeding five double-spaced pages and not including any footnotes or
26 attachments." *Id.* at 4. Nevertheless, after plaintiff informed the court during a September 16, 2016
27 case management conference that he wanted the court to reconsider a large number of issues in his
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1 upcoming motion, the court made a one-time exception to its 5-page limit and ruled that plaintiff
2 could file a 25-page motion for leave to file a reconsideration motion no later than September 30,
3 2016. Plaintiff subsequently requested an additional seven days to file his motion, and the court
4 denied plaintiff's request, noting that plaintiff had assured the court at the case management
5 conference that his motion would be on file on or before September 30. Dkt. No. 728.

6 With the instant motion, plaintiff has again failed to comply with the local rules of this
7 district and this court's orders. Plaintiff's initial motion for leave, filed on September 30, 2016,
8 was 34 pages long. Dkt. No. 735. Plaintiff was well aware that he had violated the page limits
9 imposed by this court's order and the Civil Local Rules. In a footnote on the cover page, plaintiff
10 requests: "To the extent size is an issue Pltf. makes a 7-11 Administrative Request to exceed page
11 limitations." *Id.* at i. To the extent that plaintiff wanted to request additional pages, he was
12 required to do so before the due date of his brief. Civ. L.R. 7-4(b). On October 2, 2016, plaintiff
13 filed an untimely, amended, 25-page motion for leave to file a motion for reconsideration. Dkt.
14 No. 736. Even in the revised brief, however, every single numbered page contains a large, single-
15 spaced block of text, a single-spaced footnote, or both. This court has warned plaintiff more than
16 once about using footnotes to overcome Civil Local Rule 3-4(c)(2)'s requirement for double-
17 spacing, Dkt. No. 571 at 3, and plaintiff's use of block quotations is no more appropriate. This
18 court also warned that "failure to comply with the orders of this court or the Civil Local Rules of
19 this District may result in sanctions." *Id.* at 4.

20 Because plaintiff has again failed to comply with this court's rules, despite repeated
21 warnings, plaintiff's original and revised motions for leave to file motions reconsideration are
22 denied.

23 **II. REMAINING ISSUES**

24 Because plaintiff's original and revised motions are procedurally deficient, the court need
25 not address the substance of plaintiff's motions. The court nevertheless addresses two points for
26 clarity of the record.

27 First, even if this court were to consider plaintiff's arguments, plaintiff would not be
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1 entitled to reconsideration. To obtain leave to file a motion for reconsideration:

2 The moving party must specifically show reasonable diligence in
3 bringing the motion and one of the following:

4 (1) That at the time of the motion for leave, a material difference in
5 fact or law exists from that which was presented to the Court before
6 entry of the interlocutory order for which reconsideration is sought.
7 The party also must show that in the exercise of reasonable diligence
8 the party applying for reconsideration did not know such fact or law
at the time of the interlocutory order; or

9 (2) The emergence of new material facts or a change of law
10 occurring after the time of such order; or

11 (3) A manifest failure by the Court to consider material facts or
12 dispositive legal arguments which were presented to the Court
13 before such interlocutory order.

14 Civ. L.R. 7-9(b). *See also Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255,
15 1263 (9th Cir. 1993). Plaintiff has not even attempted to identify newly discovered evidence or
16 legal authority and then explain why such evidence or legal authority could not have been
17 presented earlier. Nor has plaintiff pointed to any manifest failure by the court to consider material
18 facts or dispositive legal arguments that were timely presented to the court.

19 Second, plaintiff's argument that the court should have relied on allegations in plaintiff's
20 complaint to defeat summary judgment, *see* Dkt. No. 736 at 1-2, is unpersuasive. "A verified
21 complaint may be used as an opposing affidavit" to oppose a summary judgment motion.
22 *Schroeder v. McDonald*, 55 F.3d 454, 460 (9th Cir. 1995). However, a purportedly verified
23 complaint is only admissible if the complaint was "based on personal knowledge and set forth
24 specific facts admissible in evidence" and the plaintiff "stated under penalty of perjury that the
25 contents were true and correct." *Id.* at 460, 460 n.10. Plaintiff does not argue that the face of the
26 operative complaint, Dkt. No. 94-1, bears any indication of verification; plaintiff instead relies on
27 a later-filed declaration.

28 The court disagrees with plaintiff's argument that a single sentence in a declaration he filed
turns his complaint into a verified complaint. In a declaration attached to a reply in support of his
own motion for summary judgment, plaintiff states: "Every fact alleged in the operative
complaint, #94-1, as it relates to me, is incorporated herein as though within my personal
knowledge and attested by me, with full force and effect here." Dkt. No. 459-1 ¶ 2. Plaintiff does

1 not swear under penalty of perjury that the contents of the operative complaint are true. Nor does
 2 plaintiff even clearly state that he has personal knowledge of the facts in the operative complaint;
 3 instead, he makes the confusing statement that each fact “is incorporated herein ***as though within***
 4 ***my personal knowledge.***” *Id.* (emphasis added). It appears that what plaintiff was attempting to do
 5 was to incorporate by reference his entire, 253-page Revised Second Amended Complaint, Dkt.
 6 No. 94-1, into his reply declaration. Given the size and content of the operative complaint—most
 7 of which has nothing to do with plaintiff’s claims against the defendant deputies—it is impossible
 8 to tell which facts plaintiff was trying to incorporate. It is also impossible to tell which facts, if
 9 any, plaintiff was swearing under penalty of perjury to be true. Plaintiff has not identified the facts
 10 he claims defeat summary judgment. *See Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996)
 11 (“[I]t is not our task, or that of the district court, to scour the record in search of a genuine issue of
 12 triable fact. We rely on the nonmoving party to identify with reasonable particularity the evidence
 13 that precludes summary judgment.”). On these facts, the court finds that plaintiff’s complaint was
 14 not verified and was thus not admissible on summary judgment.¹

15 **III. ORDER**

16 For the foregoing reasons, plaintiff’s original and revised motions for leave to file motions
 17 reconsideration are DENIED. A case management conference will be held with the judge who
 18 replaces the undersigned judge following reassignment to determine a trial schedule for plaintiff’s
 19 remaining claim against Deputy Plett.

20 **IT IS SO ORDERED.**

21 Dated: October 27, 2016



22 _____
 23 Ronald M. Whyte
 24 United States District Judge

25 ¹ Plaintiff does not argue that the papers he submitted in opposition to defendants’ motion for
 26 summary judgment even attempted to verify his complaint. *See* Dkt. No. 449-1. The declaration
 27 cited in plaintiff’s motion for reconsideration was attached to plaintiff’s **reply** in support of his
 28 own motion for summary judgment. Dkt. No. 736 at 1 (citing Dkt. No. 459-1 ¶ 2). Thus, even if
 plaintiff’s declaration had verified his complaint, the verification would have been untimely. In
 any event, as explained in the court’s September 1, 2016 order, consideration of the complaint
 would not have changed the court’s conclusions. *See* Dkt. No. 711 at 13, 15, 17.